

- II. Claims 16-28, 30 and 31, drawn to a method of detecting *Plasmodium falciparum* or *P. vivae* or *P. ovale* or *P. malariae* utilizing an cox-1 gene probe or primer, classified in class 435, subclass 6.
- III. Claim 29, drawn to a method of detecting a specific species of *Plasmodium* based upon a combination of probes and primers for both LSU rRNA and cox-1 genes, classified in class 435, subclass 6.
- IV. Claims 32-34, composition kits of claim 40-41, 43-44 (in so far as claims 40-41 and 43-44 depend from claims 33-34), and claim 42, 45 (kit dependent from claim 34) drawn to probe and primer compositions that will hybridize to LSU rRNA, classified in class 536, subclass 23.1.
- V. Claims 35-37, 38, 39, composition kits of claim 40-41, 43-44 (in so far as claims 40-41 and 43-44 depend from claims 35-37, 38) drawn to probes and primer compositions for the cox-1 gene, classified in class 536, subclass 24.33.
- VI. Claims 40-45 composition kits (in so far as the claims recite a combination of probes or primers of claims 33-38) drawn to probes and primer compositions for both LSU rRNA and the cox-I gene, classified in class 536, subclass 23.7.

It has been alleged that Inventions I or II and Group III are related as subcombinations disclosed as usable in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, Group I and II are alleged to have separate utility such as detection reagents for LSU rRNA or mitochondrial coxI genes, respectively.

Inventions IV or V or VI and Groups I, II or III, respectively, are allegedly related as products and process of use. The Patent Office has alleged that the product can be used in

materially different process of use, wherein the nucleotide can be used in a method of making a polypeptide.

Applicants respectfully submit that claim 1 recites the use of a probe or primer of at least 15 nucleotides. As related to an oligonucleotide as short as 15 nucleotides, such a short molecule would not be likely to be useful in making a polypeptide. Thus, Applicants urge that there is not a likely use for a short nucleic acid molecule other than as a probe or primer. Applicants respectfully submit that the Patent Office has erred in its characterization of the claims.

Within Group I, it has been alleged that there are patentably distinct species: SEQ ID NO:1, nucleotides, 1147-1740; SEQ ID NO:5, SEQ ID NO:6, SEQ ID NO:19 and SEQ ID NO:20.

Applicants respectfully elect (with traverse) the claims of Group I for examination. Within this group, Applicants elect the following species: SEQ ID NO:1, nucleotides 1147-1740. Claims 1-11 and 13-15 read on the elected species.

Applicants make no admission that the invention of any claims group is obvious over any that of any other claims group. Applicants reserve the right to pursue patent protection for the nonelected claims if the Patent Office does not rejoin the claims for examination. Applicants do respectfully request that the claims of Group III and those of Groups IV-VI be examined together with those of Group I as related to the detection of rRNA sequences of Plasmodium.

### Conclusion

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.

If there are any outstanding issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

This amendment is accompanied by a Petition for Extension of Time (one month) and an authorization to charge to Deposit Account No. 07-1969 the amount of \$55.00 as required under 37 C.F.R. 1.17. It is believed that this amendment does not necessitate the payment of any additional fees under 37 C.F.R. 1.16-1.17. If the amount for which the charge authorized is incorrect, however, please charge any deficiency or credit any overpayment to Deposit Account No. 07-1969.

Respectfully submitted,



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